

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,
Plaintiff,

v.

THOMAS FARMER,
Defendant.

Criminal Case No. 3:13-cr-00162-DRD

DEFENDANT'S INFORMATIVE MOTION REGARDING SCHEDULING

Pursuant to this Court's order, Defendant Thomas Farmer respectfully submits this informative motion regarding the scheduling of the evidentiary hearing of November 13, 2014.

At the last status conference, this Court scheduled the November 13th evidentiary hearing for the purpose of addressing three motions: (1) the Defendant's motion to suppress evidence (Docket Nos. 135)¹; (2) Defendant's motion to compel and for an evidentiary hearing on document spoliation (Docket No. 144,); and (3) the motion to quash of subpoena recipient AJC, Inc. (Docket No. 228).

Defendant Farmer can report that the motion regarding AJC has been resolved, and a joint stipulation to that effect will be filed within ten (10) days.

¹¹ Defendant submitted supplemental authority from the Supreme Court and the Second Circuit at Dockets Nos. 157 (*Reilly v. California*, 134 S. Ct. 2473 (June 25, 2104), affirming the First Circuit's opinion in *United States v. Wurie*, 728 F.3d 1 (1st Cir. 2013)), and No. 152 (*United States v. Ganias*, 755 F.3d 125 (2d Cir. June 17, 2014)). The Government's Opposition brief is at Docket No. 140.

Defendant Farmer submits that there is a continued need for an evidentiary hearing on the spoliation motion. The documents at issue are the daily journals and calendars of two key government witnesses spanning all potentially relevant years (Mr. Glova and Mr. Baci) which were seized by the Government in April 2008 but were thereafter physically removed from their bindings and were partially reassembled, with significant pages from critical time periods now missing or out of sequence. *See Exhibit 1* (photographs of some spoliated pages of the journals and calendars)². At the *Peake* trial, these witnesses testified that they maintained these journals for purposes of operating the alleged conspiracy. *Peake* Transcript, January 15, 2013, at 168-70 (Glova’s “conspiracy day planner”); January 17, 2013, at 159 (Baci).

The Government has refused to produce any chain of custody information or documents for these thousands of pages of handwritten material authored by its two key witnesses, which is why the defense has included a motion to compel the production of any existing chain of custody documents. Instead, the Government contends that its two witnesses (Mr. Glova and Mr. Baci) were responsible for systematically cutting up years-worth of their daily journals and calendars (discarding pages in the process) at some unknown time prior to the Government’s seizure of this material in April 2008. Neither Mr. Glova nor Mr. Baci, however, were charged, or punished, for spoliating their handwritten conspiracy journals. Moreover, notwithstanding the fact that both key government witnesses (the original authors and custodians of this material) have been under legal obligations to cooperate truthfully with the Government since 2008, the Government has offered no evidence to corroborate its claims that these witnesses systematically spoliated their own personal journals and calendars prior to this material coming into the exclusive possession and control of the Government in April 2008. The Government’s trial exhibits

² The photographs were taken by defense paralegals in 2014. See Docket Entry No. 144, Exhibit 1 (paralegal declaration).

contain pages allegedly taken from among the pages of these spoliated journals and calendars, and hence the Government is vouching for their authenticity. Accordingly, the defense has requested an evidentiary hearing into the integrity, handling, and chain of custody of these thousands of pages of spoliated conspiracy material.

The third motion is a motion to suppress evidence (Docket No. 135) addressing the facts underlying the Government's search of electronic documents seized during the April 18, 2008 search of Crowley's headquarters. Defendant anticipates that this hearing would address: (a) compliance with the 30 day time limit on searches of electronic devices contained in the search warrant; and (b) subsequent searches of the seized electronic data, either by government agents or allegedly pursuant to a 2012 search warrant.

Respectfully submitted,

Dated: October 27, 2014

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CERTIFICATE OF SERVICE

I hereby certify on the 27th day of October, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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